



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** MNSD MNDC

### Introduction

This hearing was convened in response to cross applications - an application by the landlord **and** an application by the tenant.

The tenant filed an application on September 18, 2011 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. Return of the security deposit - Section 38
2. Recover filing fee – section 72

The landlord filed an application on November 29, 2011 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. A Monetary Order for damages - Section 67
2. Recover filing fee – section 72

Both parties attended the conference call and provided sworn testimony and prior submissions. The landlord testified that they sent their application to the tenant by registered mail on November 30, 2011. The tenant claims he has not received it. The Act states that if a document is served by mail, it is deemed received on the 5<sup>th</sup> day *after* it is mailed. A respondent to an application must be served at least five days before the hearing. I find that the landlord's late application and method of service has not permitted the tenant to be properly served or notified of this hearing. As a result, I preliminarily **dismiss** the landlord's application, with to leave to reapply.

The hearing proceeded solely on the merits of the tenant's application.

### Issue(s) to be Decided

Is the tenant entitled to the monetary amount claimed?

### Background and Evidence

The undisputed facts before me, under affirmed testimony by both parties, are as follows. The parties agree that the tenancy began on December 1, 2009 and ended on August 01, 2011. The landlord collected a security deposit of \$800 at the outset of the tenancy. There was a move in inspection conducted at the outset. There was no move out inspection report completed at the end of the tenancy, although the parties agree that the landlord (wife of landlord applicant) and the tenant (tenant applicant's co-tenant CM) conducted a "walk around". I do not have benefit of any documentation respecting the tenant's claims. Regardless, the landlord did testify that on August 18, 2011 he personally received a letter from co-tenant CM requesting the return of their security deposit, and that the letter included the tenant's forwarding address in writing. The landlord and tenant had discussions about the security deposit and the condition of the rental unit at the end of the tenancy, but there was no agreement on the administration of the security deposit. The landlord still holds the security deposit in the amount of \$800.

### **Analysis**

On the basis of the sworn evidence and on the balance of probabilities, I have reached a decision.

**Section 38(1)** of the Act provides as follows (**emphasis for ease**)

38(1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

38(1)(a) the date the tenancy ends, and

38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.

I find that the landlord failed to repay the security deposit, or to make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and

38(6)(b) **must pay the tenant double the amount of the security deposit**, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$800 and was obligated under section 38 to return this amount. The amount which is doubled is the \$800 original amount of the deposit. There is no interest applicable. As a result I find the tenant has established an entitlement claim for **\$1600** and is further entitled to recovery of the **\$50** filing fee for a total entitlement of **\$1650**.

### **Conclusion**

The landlord's application is **dismissed** with leave to reapply.

**I grant** the tenant an Order under section 67 for the sum of **\$1650**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 06, 2011

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Residential Tenancy Branch